



MALDEF

Mexican American Legal Defense and Educational Fund

**Testimony of Nina Perales, MALDEF Southwestern Regional Counsel,
Regarding House Joint Resolution 53**

December 6, 2005

Chairman Turner and Members of the House Government Reform Subcommittee on Federalism and the Census, I am Nina Perales, Southwest Regional Counsel of the Mexican American Legal Defense and Educational Fund (MALDEF). We are a nonpartisan organization founded in Texas in 1968 to defend and protect Latino civil rights, including voting rights. Thank you for inviting me here today to testify regarding House Joint Resolution 53.

Elected officials make decisions every day that impact the lives of all who live in their districts. In performing their official duties, elected officials do not only serve citizens. Immigrants, both documented and undocumented, are a sector of society that should not be ignored. Immigrants pay taxes, buy goods and services, pay rent, buy homes, earn educations, and participate in the community as citizens do. Elected officials have a duty to their constituents to consider the full impact of their decisions; therefore, election districts should be apportioned considering all persons affected by official decisions.

Restricting apportionment to citizens contravenes the intent of the framers of the Fourteenth Amendment. Section 2, Clause 1 of the 14th Amendment provides for apportionment of seats for the U.S. House of Representatives based on persons, not citizens, and has never restricted congressional representation to only to citizens. Section 2 was adopted to override the infamous “three-fifths” rule by which slaves were not counted as full persons for the purpose of apportionment. In 1860, the foreign born population of the United States was 13%.¹ Today, foreign born persons comprise 11.7% of the U.S. population – a smaller proportion than when the 14th Amendment was ratified.² Within this context, the framers of the 14th Amendment could have restricted representation by limiting the numbers used for apportionment by a variety of factors, including race, gender or nativity. Instead, they chose to apportion the seats in the House of Representatives based upon total population.

The Fourteenth Amendment uses both terms – “citizen” and “person.” For example, the Fourteenth Amendment discusses the right to vote as one belonging to U.S. citizens, and states that persons born or naturalized in the U.S. are citizens. However, the

¹ U.S. Census, “Nativity of the Population and Place of Birth of the Native Population: 1850 to 1990,” found at <http://www.census.gov/population/www/documentation/twps0029/tab01.html>

² U.S. Census, “The Foreign-born Population in the United States: 2003,” found at <http://www.census.gov/prod/2004pubs/p20-551.pdf>

Fourteenth Amendment also explicitly protects all “persons” from deprivations of life, liberty, property and from denial of the equal protection of the laws and provides that representation, through apportionment, flows to all “persons,” regardless of whether or not they hold the franchise. It is beyond dispute that non-citizens are “persons” within the meaning of the 14th Amendment to the Constitution. See *Plyler v. Doe*, 457 U. S. 202, 210 (1982); *Mathews v. Diaz*, 426 U. S. 67, 77 (1976); *Kwong Hai Chew v. Colding*, 344 U. S. 590, 596-598, and n. 5 (1953); *Yick Wo v. Hopkins*, 118 U. S. 356, 369 (1886); *Wong Wing v. United States*, 163 U. S. 228, 238 (1896). The framers of the 14th Amendment clearly intended congressional representation to benefit “the whole number of persons” in each state. See *Federation for American Immigration Reform v. Klutznick*, 486 F. Supp. 564 (D.D.C.) (three-judge court), *appeal dismissed*, 447 U.S. 916 (1980).

Ensuring that congressional representation flows to all persons equally is also sound public policy. Each individual, regardless of whether he or she can exercise the franchise, should receive the benefits of representation by elected officials. A congressional representative serves as more than just the voice of the people who turn out to vote, or who voted for him or her during the last congressional election. Congressional representatives serve all individuals in their district, including children and other non-voters by bringing critical resources to the district, representing the economic and social interests of everyone living in the districts’ cities and towns, and advocating for public policies that will benefit all of the districts’ population.

H.J. Res. 53 would restrict representation by narrowing the apportionment base in a way that the Constitution’s framers never intended. According to the U.S. Census, there are approximately 31 million foreign born people living in the United States. Over one-third of these, or 12.5 million people, have become U.S. citizens. Another 18.5 million are not citizens. It takes time to become a U.S. citizen. In general, legal permanent residents who immigrated to the U.S. in recent years must wait either three or five years to file their naturalization papers. In some cities, like Houston and Seattle, it can take two to three years from the filing of a naturalization application to taking the oath of citizenship. In the meantime, millions of legal permanent residents and other immigrants legally present in the United States work, attend school, pay taxes, register for the selective service (a substantial number serve in the military), buy property, invest their earnings and serve their communities as firefighters, police and civil servants. H.J. Res. 53 would unfairly penalize this population.

H.J. Res. 53 would also strip representation from high-population states that are composed overwhelmingly of U.S. citizens but which also contain higher numbers of non-citizens. There is no state in the U.S. where non-citizens comprise the majority of residents. Texas is one example of a state comprised primarily of U.S. citizens that would suffer from a policy of restrictive representation. If apportionment were conducted today based on total population, Texas would receive a 33rd congressional seat and each member of congress from Texas would represent approximately 664,000

people.³ H.J. Res. 53 would deny Texas that congressional seat, forcing an extra 20,000 people into the district of each member of the Texas delegation. And 19.6 million U.S. citizen Texans would have less representation in Congress.⁴

In California, the effects would be even worse. H.J. Res. 53 would force approximately 54,000 additional people into each California congressional district.⁵ As a result, 29.6 million U.S. citizen Californians will suffer a loss of congressional representation and will, in effect, be penalized because they live in a diverse state. The examples of Texas and California illustrate that the effects of H.J. Res. 53 will fall most harshly upon U.S. citizens, the group purportedly intended to benefit under the Resolution.

Furthermore, stripping representation from states with non-citizens necessarily has a disparate impact on Latino U.S. citizens. More than one-half of legal immigration is family-based. Among this group of legal immigrants, who come to the United States commonly to live near their relatives, the largest number of people was born in Mexico. Because many are living and working today in Latino communities across the U.S., H.J. Res. 53 will serve to shift representation away from states containing Latino citizens and permanent legal residents to other states with higher citizen populations and fewer Latinos. Estimates of a citizen-only based distribution of congressional seats demonstrate that states with relatively larger Latino populations lose representation under H.J. Res. 53. Arizona, California, Florida, Nevada, New York and Texas all have in common substantial Latino populations and all would be worse off under a restrictive apportionment scheme in which non-citizens are ignored.

Including non-citizens in congressional apportionment does not dilute representation of those in low non-citizenship states because, under to the Constitution, representation is a concept that benefits all persons -- not only citizens, or only adults, or only people living stateside, or only the mentally competent. Representation does not accrue only to the benefit of those citizens who register, or vote, or vote for the winning candidate in a congressional election. The argument that including non-citizens in the apportionment count “dilutes representation” presumes, incorrectly, that representation belongs only to citizens. Voting rights lawyers know the term “dilution” as one that applies to voting, not representation.⁶ Dilution simply does not apply when representation flows to individuals and the apportionment system allocates representatives based on population.

³ According to the U.S. Census American Community Survey, Texas had a population in 2004 of 21,912,164.

⁴ In 2000, the U.S. Census estimated that approximately 2 million Texans were non-citizens.

⁵ According to the U.S. Census American Community Survey, California had a population in 2004 of 35,055,227. With 53 congressional seats, each district ideal population is 661,419. With only 49 seats, each California congressional district would have 715,412 people in it. The difference is 53,993.

⁶ For example, in *Reynolds v. Sims*, 377 U.S. 533 (1964), the U.S. Supreme Court held that “an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the state.”

In support of their effort to restrict representation, critics of population-based apportionment mischaracterize, as a function of the number of citizens residing in an electoral district, the number of voters that choose to turn out and vote in any particular election. In truth, voter registration and turnout is by far the greatest determinant of the “weight” of a voter’s vote than the number of citizens residing in the electoral district. For example, California’s 34th congressional district is located within Los Angeles County, where for a variety of historical and socioeconomic reasons, registration and turnout among eligible persons is low. For example, in the 2002 general election, only 32% of eligible voters in the county turned out and cast their vote. Low voter turnout necessarily reduces the number of votes cast in the election and the number of votes required to win the election. To suggest that the number of votes cast in that or any other District 34 election was affected more by the citizenship rate than voter turnout is misleading and untrue.

To substantially alter the 14th Amendment to impose an exclusion on representation that the original framers did not intend would violate the spirit of this important constitutional provision and would be a disservice to citizens and non-citizens alike. To punish millions of residents of states with higher numbers of non-citizen residents serves no legitimate policy purpose and places unwarranted burdens upon the congressional representatives in these states. I strongly urge you to reject House Joint Resolution 53.